

a wick inside the candle;

wherein the candle base material includes a wax and a gelling agent

wherein the gelling agent is a di-block copolymer, tri-block copolymer, radial copolymer, star polymer, multi-block copolymer, or a mixture thereof.

49. (New) A free-standing candle comprising:

a first portion formed of a candle base material;

a second portion in contact with the first portion, the second portion including at least one flame retardant and being substantially resistant to burning; and

a wick in the first portion.

50. (New) The candle of claim 49 wherein the wick is further in contact with the second portion.

51. (New) The candle of claim 49 wherein the wick is further in the second portion.

52. (New) The candle of claim 51 further comprising a third portion formed of a second candle base material in contact with the second portion, wherein the wick is further in the third portion.

53. (New) The candle of claim 52 wherein the wick extends through the third portion.

54. (New) The candle of claim 52 wherein the second candle base material is the same as the candle base material of the first portion.

55. (New) The candle of claim 52 wherein the second candle base material is not the same as the candle base material of the first portion.--

REMARKS

DS →
The Applicants would like to express their appreciation to the Examiner for the time and input during the telephone interview of February 15, 2002. Claims 1 - 47 are pending in this patent application. All of the pending claims are rejected. Claim 1 has been amended to recite the composition of the candle to consisting essentially of a first portion (candle base material); a second portion (flame retardant); and a wick. Claim 24 has been amended to recite the composition of the self-extinguishing candle to consisting essentially of a candle body; a wick; and a flame-resistant block. Claims 31, 38, 40, 43, and 45 have been amended to correct their dependency.

RESPONSE TO REJECTION UNDER 35 U.S.C. § 102(a)

Claims 1-3, 9-14, 17, 23-27, 33-38, 41 and 47 are rejected under 35 U.S.C. § 102(a) as being anticipated by Lin (US 6,296,477). In making the rejection, the Examiner makes the following statement.

The structure and method as claimed are fully anticipated by Lin (note col. 3, lines 40-63).

Office Action of January 3, 2002, page 2.

Lin cannot be considered prior art. Lin's filing date is September 20, 2000. The priority claim of the current application is to a provisional application 60/210,057 filed on June 7, 2000. Therefore, the current application has priority of approximately 3 months prior to the filing of the Lin application and as such the Lin application cannot be used as prior art against the current application.

RESPONSE TO REJECTION UNDER 35 U.S.C. § 102(b)

Claims 1-3, 13-14, 22, 24-27, 34, 37-38, and 46 are rejected under 35 U.S.C. § 102(b) as being anticipated by Baumer (US 574,376). In making the rejection, the Examiner makes the following statement.

The structure and method as claimed are fully anticipated by Baumer (note element 5, fig. 2).

Office Action of January 3, 2002, page 3.

Baumer '376 discloses "a body of wax, preferably cylindrical in form and preferably of greater diameter than height, of any suitable illuminant, such as wax, paraffin, or candle composition, provided centrally with an elevation 2 to provide initially for feeding the wick, which body 1 has a hole 3 formed centrally therein opening out of the top and bottom of the wax body." See page 1, lines 30 - 38. The night-light further comprises "a paper casing or envelop secured about the wax body, but of a height greater than that of the wax body, so as to form a recess at the bottom for the reception of plaster-of-paris or other moldable and non-combustible material 5, which fills

up the recess and forms a seat for the wax body." *See page 1, lines 39 - 45.* The night-light further comprises a wick which "passes through the aperture 3 in the wax body, preferably loosely, as shown, and extends out from the top and bottom of the same, the lower end or portion of the wick passing snugly through a tube 7, which is preferably split, as at 8, formed by bending a piece of metal of the required height to form the partially-closed tube, the edges of the metal not meeting, thereby forming the split." *See page 2, lines 52 - 60.*

The claimed candle consists essentially of a first portion formed of a candle base material; a second portion in contact with the first portion, the second portion including at least one flame retardant and being substantially resistant to burning; and a wick inside the candle. The claimed invention does not include a paper casing or envelop which forms a recess, nor does it include a tube for holding the wick. Also, the second portion does not form a seat for the first portion. The preamble of claim 1 recites a candle, which is a meaningful limitation since it defines the product being claimed. In claims directed to articles and apparatus, any phraseology in the preamble that limits the structure of that article or apparatus must be given weight. In *re Stencel*, 828 F.2d 751, 4 USPQ2d 1071 (Fed. Cir. 1987) Candle is defined as, "a usually molded or dipped mass of wax or tallow containing a wick that may be burned (as to give light, heat, or scent or for celebration or votive purposes." (Merriam-Webster's Collegiate Dictionary, online, 2/15/02). A candle holder may function as a flame retardant, but would not be understood to be part of a candle. Put differently, a candle put in a candle holder results in an article different from a candle itself. The second portion of the claimed candle is flame resistant and is an integral part of the candle. The preamble of claim 24 and claim 25 include a self-extinguishing candle. The self-extinguishing candle does not include an outside extinguishing source, the self-extinguishing source is an integral part of a candle, not a base or and external agent. For these reasons, Baumer '376 does not anticipate any of the pending claims. Consequently, pending claims 1-3, 13-14, 22, 24-27, 34, 37-38, and 46 are patentable.

Claims 1-4, 9-19, 23-28, 33-43, and 47 are rejected under 35 U.S.C. § 102(b) as being anticipated by Linton (US 4,332,548). In making the rejection, the Examiner makes the following statement.

The structure and method as claimed are fully anticipated by Linton (note col. 2, lines 8 – 68).

Office Action of January 3, 2002, page 3.

Linton '548 discloses a "candle container 10 having upper transparent candle composition layer 11 and lower transparent safety layer 12 with wick 13 extending beyond the upper surface of layer 12." *See column 1, lines 55 - 59.*

The claimed candle consists essentially of a first portion formed of a candle base material; a second portion in contact with the first portion, the second portion including at least one flame retardant and being substantially resistant to burning; and a wick inside the candle. The claimed invention does not include a container. The preamble of claim 1 is for a candle, which is a limitation since it defines the product being claimed. In claims directed to articles and apparatus, any phraseology in the preamble that limits the structure of that article or apparatus must be given weight. In re Stencel, 828 F.2d 751, 4 USPQ2d 1071 (Fed. Cir. 1987) Candle is defined as, "a usually molded or dipped mass of wax or tallow containing a wick that may be burned (as to give light, heat, or scent or for celebration or votive purposes." (Merriam-Webster's Collegiate Dictionary, online, 2/15/02). A candle holder may function as a flame retardant, but would not be understood to be part of a candle. The second portion of the claimed candle is flame resistant and is an integral part of the candle. The preamble of claim 24 and claim 25 include a self-extinguishing candle. The self-extinguishing candle does not include an outside extinguishing source, the self-extinguishing source is an integral part of a candle, not a base or and external agent. For these reasons, Linton '548 does not anticipate any of the pending claims. Consequently, pending claims 1-4, 9-19, 23-28, 33-43, and 47 are patentable.

RESPONSE TO REJECTION UNDER 35 U.S.C. § 103(a)

Claims 5 – 8, and 29 – 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lin. In making the rejection, the Examiner makes the following statement.

Lin discloses the invention substantially as claimed. However, Lin does not disclose the particular flame retardant as claimed in claims 5 – 8 and 29-32.

It is noted that the particular flame retardant as claimed is deemed obvious matter of design choice obvious to one of skilled in the art as evident by applicants' own admission on pages 7 – 8 of the instant specification. No patentable weight can be given thereto in the absence of a showing of criticality by applicants.

Office Action of January 3, 2002, pages 3-4.

As discussed above, Lin cannot be considered prior art. Lin's filing date is September 20, 2000. The priority claim of the current application is to a provisional application 60/210,057 filed on June 7, 2000. Therefore, the current application has priority of approximately 3 months prior to the filing of the Lin application and as such the Lin application cannot be used as prior art against the current application.

Claims 20-21, and 44-45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Linton in view of Lam. In making the rejection, the Examiner makes the following statement.

Lam teaches the use of an object (note element 18, fig. 1) for the purpose of forming a decorative candle body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the candle body of Linton with an object in order to form a decorative candle body in view of the teaching of Lam.

Office Action of January 3, 2002, page 4.

Lam '428 teaches a candle arrangement having a body made up from a plurality of individual pieces of wax, a wick passing through this body, and containment means to keep the plurality of individual wax pieces together to form the candle body. See Abstract. Neither Linton nor Lam discloses a candle having a first portion including an object which is insoluble and will not burn. The objects of Lam '428 are soluble and form the candle body and will burn. Because the objects of Lam will burn, the invention is nonobvious over the art of record, singularly or in combination. As such, the rejections under 35 U.S.C. § 103(a) should be withdrawn.

CONCLUSION

The Applicants have addressed all of the Examiner's rejections. In conjunction with the claim amendment and arguments above, the Applicants believe that the claims are now in condition for allowance and respectfully request that the Examiner grant such an action. If any questions or issues remain in the resolution of which the Examiner feels will be advanced by a conference with the Applicants' attorney, the Examiner is invited to contact the attorney at the number noted below.

The requisite fee is enclosed. Should there be any additional fees required, please charge such additional fees to Deposit Account 10-0447, reference 42133.13USPT(BAI).

Respectfully submitted,

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APPENDIX A
Marked-up Claims

1. (Amended) A candle ~~comprising~~ consisting essentially of:
a first portion formed of a candle base material;
a second portion in contact with the first portion, the second portion including at least one flame retardant and being substantially resistant to burning; and
a wick inside the candle.
24. (Amended) A self-extinguishing candle, consisting essentially of ~~comprising~~:
a candle body formed of a paraffin wax; the candle body being opaque or substantially opaque,
a wick inside the candle body for sustaining a candle flame when lit, and
a flame-resistant block in contact with one end of the candle body, the flame-resistant block including at least one flame retardant and being capable of extinguishing the candle flame after the candle body is substantially consumed by the candle flame.
31. (Amended) The ~~candle~~ method of claim 30, wherein the flame retardant is tri-(2,3-dibromopropyl) phosphate, ammonium phosphate, or bis(bromochloropropyl) bromochloropropyl phosphonate.
38. (Amended) The ~~candle~~ method of claim 37, wherein the wax is paraffin wax, beeswax, animal wax, vegetable wax, mineral wax, synthetic wax, or a mixture thereof.
40. (Amended) The ~~candle~~ method of claim 39, wherein the gelling agent is a di-block copolymer, tri-block copolymer, radial copolymer, star polymer, multi-block copolymer, or a mixture thereof.
43. (Amended) The ~~candle~~ method of claim 42, wherein the additive is an antioxidant, stabilizer, fragrance, colorant, insect repellent, or a mixture thereof.
45. (Amended) The ~~candle~~ method of claim 44, wherein the object is an insoluble star, glitter, sparkle, ribbon, or a combination thereof.

48. (New) A candle comprising:
a first portion formed of a candle base material;
a second portion in contact with the first portion, the second portion including at least one
flame retardant and being substantially resistant to burning; and
a wick inside the candle;
wherein the candle base material includes a wax and a gelling agent
wherein the gelling agent is a di-block copolymer, tri-block copolymer, radial copolymer, star
polymer, multi-block copolymer, or a mixture thereof.
49. (New) A free-standing candle comprising:
a first portion formed of a candle base material;
a second portion in contact with the first portion, the second portion including at least one
flame retardant and being substantially resistant to burning; and
a wick in the first portion.
50. (New) The candle of claim 49 wherein the wick is further in contact with the second portion.
51. (New) The candle of claim 49 wherein the wick is further in the second portion.
52. (New) The candle of claim 51 further comprising a third portion formed of a second candle
base material in contact with the second portion, wherein the wick is further in the third
portion.
53. (New) The candle of claim 52 wherein the wick extends through the third portion.
54. (New) The candle of claim 52 wherein the second candle base material is the same as the
candle base material of the first portion.
55. (New) The candle of claim 52 wherein the second candle base material is not the same as the
candle base material of the first portion.